

Re: FW: comments on RR docs: RADs for Spur Lines and WY/HM, PMPs, RAWP 

Clifford Villa to: Trueblood, Craig

08/11/2009 11:32 AM

Cc: "Sheppard, Bruce A", "Wurtzler, Gail", "Lawrence, Robert"

Craig: Got your voicemail. Can you call me at 12:00 noon our time? I've got to run to another meeting at 12:30 but would like to talk with you and UP attys before then if possible.

Thanks.

Cliff Villa
Assistant Regional Counsel
U.S. EPA Region 10

"Trueblood, Craig"

Confidential - For Settlement Purposes

08/11/2009 11:23:56 AM



"Trueblood, Craig"
<craig.trueblood@klgates.com>
>

08/11/2009 11:28 AM

To Clifford Villa/R10/USEPA/US@EPA

cc "Wurtzler, Gail" <Gail.Wurtzler@dgsllaw.com>, "Lawrence, Robert" <Robert.Lawrence@dgsllaw.com>, "Sheppard, Bruce A" <Bruce.Sheppard@bnsf.com>

Subject FW: comments on RR docs: RADs for Spur Lines and WY/HM, PMPs, RAWP

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Cliff,

I left v-mail this morning but have not heard back from you yet. Given the urgency of this matter I am sending a short e-mail summarizing BNSF's concerns.

1) Level of detail. Ed is asking for a level of detail that BNSF was not prepared to provide as part of the CD. Many of his requests are of a scale appropriate for plans and specs, which are not yet being prepared. Here are two examples:

EPA has requested that we provide traffic control, site use, and work sequencing plans as part of this submittal. These plans are typically prepared by the remediation contractor based on their proposed approach to the work.

Grading plan – the EPA is requesting a grading plan for the full Wallace Yard site. The plans and drawings currently specify that positive drainage must be maintained, but don't specify exact grades that the contractor must meet, allowing for field engineering of the barrier as appropriate.

2) Work beyond the EE/CA. In several instances, Ed is asking that the RAD Drawings specify work that is not required by the EE/CA or Action memo. Here are examples:

The EPA is requesting addition of a note on the drawings indicating that we will not be damaging or removing any of the vegetation on the more heavily vegetated areas to the north of I-90. We are not planning to make significant efforts to save that vegetation because the anticipated future use of the property is commercial or industrial.

The EPA has reiterated that they believe fencing is required along the up-slope site of the former foundation area at the Hercules Mill site, which is not required by the EE/CA.

Streambank regrading/rip-rap comments – we will tie the barrier into existing materials at the edge of the streambank and repair any damage that occurs to the streambank, but permanent erosion controls along the streambank are not part of the scope of the response action.

At end of Ninemile Creek, beyond MM 3.75, the EE/CA called for no further action except road shoulder remediation if within 1000 ft. of residence. Now EPA is asking for a gravel barrier over much of this area.

3) Work not consistent with CD. In a couple instances, Ed is requesting changes in the RAD Drawings that are not consistent with the provisions of the CD we negotiated. First, he is asking that RUAs along the former Spur Lines be noted on the RAD Drawings but these are areas where DEQ will be doing work, not BNSF and UPRR. Second, Ed is indicating that contaminated material within the RoW cannot be graded or used to cut and fill within the former RoW, prior to capping, in order to achieve property grades and drainage.

4) Functional RoW Width. Ed is asking that the entire former RoW width be expressly included for remediation in all the RAD Drawings. This will increase the scope of work, and the cost, well beyond what is anticipated in the EE/CA and what was authorized by BNSF for purposes of this settlement. When we resolved the monetary issues in the CD the last couple weeks I was under the impression that the FROWW concept was acceptable to EPA provided the railroads showed some flexibility in that regard in the residential areas that DEQ was going to remediate under the BPRP (and for which EPA would be seeking cost reimbursement). Now that the agency has what it wanted on the monetary provisions, are we now being asked to abandon that part of the understanding?

Please give me a call to discuss.

Craig T.

From: Moreen.Ed@epamail.epa.gov [mailto:Moreen.Ed@epamail.epa.gov]

Sent: Sunday, August 09, 2009 10:35 PM

To: Handy, Sara

Cc: Villa.Clifford@epamail.epa.gov; Nicholas.Zilka@deq.idaho.gov; Chung.Angela@epamail.epa.gov; Grandinetti.Cami@epamail.epa.gov

Subject: comments on RR docs: RADs for Spur Lines and WY/HM, PMPs, RAWP

Hi Sara:

I have a number of comments and must convey to you that the revised RADS and documents while attempting to address some of our comments and discussions fall short of being in final form. Please recognize that our comments on the 4 referenced documents are intended to be of a representative nature and should be taken as illustrative of the types of issues that we found. The comments should be taken as indicative of the types of issues and errors that have been identified, but it is incumbent upon you to make the comprehensive changes necessary to finalized these documents. In the interest of getting these completed in the most expedient nature please produce the documents in a final, biddable, and constructible form. That will serve everyone's interest and get us to the endpoint as quickly as possible. We have worked very quickly to provide these comments in the interest of getting these documents completed as soon as possible. We are willing to make substantial efforts to work with you so that the revisions can be carried out as quickly as possible. That being said, we have many demands on our schedules, and the more communicative you can be as to your plans and turn around times the better the

government team will be able to respond. As you know, when we met in Coeur d'Alene in May we had requested a schedule for deliverables so that we could plan our time accordingly. The production and distribution of such a plan would have been very helpful and would have helped us to plan our reviews better. A simplified form of such a schedule would be very helpful for what I hope is the final submission of these documents. However, given the apparent lack of site detail and project specifications, it will require a great deal of work on your firms part to get these into a final, acceptable form.

Myself and others would be glad to get on the phone to discuss these in more detail.

Ed Moreen
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